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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

SANCTUARY MERCED,

Plaintiff and Appellant,

v.

CENTRAL PRESBYTERIAN CHURCH OF
MERCED et al.,

Defendants and Respondents.

F056092

(Super. Ct. No. 150802)

OPINION

APPEAL from a judgment of the Superior Court of Merced County. Ronald W. Hansen, Judge.

Law Offices of Richard L. Harriman and Richard L. Harriman for Plaintiff and Appellant.

Mason, Robbins, Browning & Godwin and Michael L. Mason for Defendants and Respondents.

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Plaintiff and its attorney appeal from an order imposing sanctions on the attorney for filing a second amended complaint which the court concluded was not supported by

an evidentiary basis for the factual allegations it contained. Appellants assert there was a sufficient evidentiary basis in the declarations signed by plaintiff's members and in the verified allegations of the second amended complaint itself. Appellants also argue that the court erred in sustaining without leave to amend the demurrer to the breach of trust cause of action of the first amended complaint. We reverse the order imposing sanctions against plaintiff's attorney; we find the order sustaining the demurrer to the breach of trust cause of action is beyond the scope of this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On November 16, 2007, plaintiff, Sanctuary Merced, through its attorney, Kenneth Mackie, filed its original complaint against defendants, Central Presbyterian Church of Merced (CPC) and Session, its elected governing body. The complaint alleged plaintiff is a non-profit corporation composed of members of the ad hoc committee on church facilities (hereinafter ad hoc committee), which is composed of members of CPC opposed to demolition of CPC's sanctuary building. It alleged the building is a unique historical building, to which CPC holds title in trust for the use and benefit of the Presbyterian Church USA (PCUSA), the larger church body of which CPC is a part. On November 21, 2004, the congregation voted for the church to remain downtown and for a new sanctuary to be constructed; the congregation members were told this was not a vote to demolish the existing building. Subsequently, it was characterized as a vote to construct a new sanctuary to replace the existing one. Session later submitted building plans to the congregation, which involved construction of a new sanctuary on the site of the existing building. In 2006, Session hired a consultant to survey the congregation; the survey was not based on a representative sample of the congregation. In November 2006, the ad hoc committee conducted an informal survey and found 79 percent of the respondents favored preserving or rehabilitating the existing building. Session hired architects to do preliminary field work and began fundraising for construction.

The complaint contained two causes of action: fraud and breach of trust. Essentially, the fraud cause of action alleged that Session concealed that the congregational votes were taken to authorize demolition of the existing building, concealed or misrepresented the cost of rehabilitating the existing building for continued use, and disseminated misleading or incomplete information to the congregation to make replacement of the sanctuary building seem like a better option than rehabilitation. Session pursued a plan to construct a new building on the site of the existing building to the exclusion of any alternative, and it misrepresented or concealed facts, as a result of which the congregation voted to demolish the sanctuary building. The breach of trust cause of action alleged Session stands in a fiduciary relationship to the CPC congregation and to PCUSA; by expending funds toward the planned demolition of the sanctuary building without the consent of PCUSA and without an informed vote of the CPC congregation, Session breached its fiduciary duty to PCUSA and the members of CPC. Plaintiff prayed for a temporary restraining order, preliminary injunction, and permanent injunction enjoining defendants from demolishing the sanctuary building or expending funds or entering into contracts to do so.

Defendants' demurrer to the original complaint was sustained with leave to amend on the ground both causes of action were uncertain. Plaintiff filed a first amended complaint, alleging the same two causes of action.¹ This complaint added an allegation that, on January 27, 2008, the congregation voted 266 to 75 to demolish the sanctuary building. Defendants' demurrer to the first cause of action of the first amended complaint was sustained with leave to amend, on the ground it failed to state facts sufficient to constitute a cause of action. The court specified that, "in the absence of at least 96 additional plaintiffs who would testify that they were misled and voted to

¹ The fraud cause of action was now captioned "deceit."

approve the construction of a new sanctuary in reliance upon misrepresentations of the Defendants, the allegations do not state facts sufficient to constitute a cause of action.” Apparently, the court believed that, in order to allege the necessary reliance, plaintiff needed to allege that a majority of those voting in January 2008 would have voted against demolition in the absence of defendants’ wrongful conduct. The court sustained the demurrer to the second cause of action without leave to amend; the court stated it showed on its face that plaintiff had no standing to assert the breach of trust allegation.

Plaintiff filed a second amended complaint. It alleged two causes of action: deceit and unfair business practices. The first cause of action for deceit did not allege that a majority of the congregation members who voted for demolition on January 27, 2008, would have voted against demolition if they had known the true facts as alleged by plaintiff in that cause of action. The second cause of action merely alleged that the acts committed by Session as alleged in the first cause of action constituted unfair business practices within the meaning of Business and Professions Code section 17200.

On July 11, 2008, defendants filed their demurrer to the second amended complaint, asserting plaintiff had not cured the defects in the first cause of action, and the unfair competition law (Bus. & Prof. Code, § 17200, et seq.) had no application to the activities of a church alleged in the second amended complaint. On the same date, defendants served on plaintiff a motion for sanctions, requesting the imposition of sanctions against plaintiff’s attorney pursuant to Code of Civil Procedure sections 128.7 and 128.5.² The motion asserted the second amended complaint lacked any evidentiary basis, was not warranted by existing law or a nonfrivolous argument for extension of existing law, and was interposed primarily for an improper purpose, to annoy and harass defendants. Plaintiff did not withdraw the second amended complaint within 21 days

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

after service of the motion on plaintiff, and, on August 4, 2008, defendants filed the motion for sanctions with the court. Prior to filing the motion for sanctions, defendants served on plaintiff a notice of the deposition of plaintiff's president, in which defendants sought production of documents identifying the congregation members surveyed by plaintiff's members in November 2006. On August 14, 2008, plaintiff filed a request for dismissal of its entire action without prejudice, and the dismissal was entered on that date. Plaintiff represented it dismissed the action to avoid identification of the persons surveyed, because its members had promised them confidentiality.

The motion for sanctions was heard and granted on August 22, 2008. Pursuant to section 128.7, the court imposed on Mackie sanctions of \$1,337.50, payable to defendants for their attorney's fees and expenses. The order also provided that, if plaintiff lodged a request for dismissal with prejudice with the court within 15 days, Mackie would be relieved of the pecuniary sanctions. The order stated that, on two separate occasions, plaintiff was afforded an opportunity to provide allegations or factual contentions based upon evidentiary support, but failed to do so; it also stated plaintiff was not likely to do so even after a reasonable opportunity for further investigation or discovery. Plaintiff and Mackie filed a notice of appeal from the sanctions order.³

DISCUSSION

I. Sanction Order

A trial court's award of sanctions under section 128.7 is reviewed under an abuse of discretion standard. (*Burkle v. Burkle* (2006) 144 Cal.App.4th 387, 399.) Relief from an abuse of discretion will only be granted if it clearly appears that the injury resulting

³ Appellants' motion for judicial notice, filed June 2, 2009, is denied. Only relevant material may be judicially noticed. (*People v. Curl* (2009) 46 Cal.4th 339, 360, fn. 16.) The materials identified in appellants' motion are not relevant to the issues raised by this appeal.

from the wrong is sufficiently grave to amount to a manifest miscarriage of justice. (*Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408, 422.)

Section 128.7, subdivision (a), requires that every pleading be signed by the attorney for the party, or by the party if he or she is unrepresented. Subdivision (b) of that section explains the effect of signing and filing a pleading with the court:

“(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, ... or other similar paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

“(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

“(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

“(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

“(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.” (§ 128.7, subd. (b).)

The statute provides that sanctions may be imposed on an attorney or party who violates section 128.7, subdivision (b), after notice and a reasonable opportunity to respond. (§ 128.7, subd. (c).) It requires that a motion for such sanctions be made separately from other motions, describe the specific conduct alleged to violate section 128.7, subdivision (b), and be served on the party to be sanctioned at least 21 days before it is filed with the court. (§ 128.7, subd. (c)(1).) The motion may only be filed with the court if the challenged pleading or paper is not withdrawn or appropriately corrected within the 21-day period. (*Ibid.*) “The purpose of section 128.7 is to deter frivolous

filings. That purpose is advanced by allowing the offending party to withdraw or amend a sanctionable paper after being alerted to the violation. [Citation.]” (*In re Marriage of Falcone & Fike* (2008) 164 Cal.App.4th 814, 826.) If the plaintiff who filed a challenged complaint dismisses it within the 21-day “safe harbor” period, the motion may not be filed and no sanctions may be imposed. If, however, the plaintiff does not dismiss the challenged complaint, or dismisses it after the 21-day period has passed and the defendant has filed his motion for sanctions with the court, the court still has authority to grant the motion and impose sanctions on the plaintiff or the attorney for presenting an improper pleading. (*Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967, 975.)

“Section 128.7 was adopted as part of an effort to largely bring California sanctions practice into line with rule 11 of the Federal Rules of Civil Procedure (28 U.S.C.).⁴” (*Goodstone v. Southwest Airlines Co.* (1998) 63 Cal.App.4th 406, 419.) The language of rule 11 is virtually identical to that of section 128.7. Because of this, federal case law construing rule 11 is persuasive authority in construing section 128.7. (*Levy v. Blum* (2001) 92 Cal.App.4th 625, 636.) Accordingly, the following authorities are instructive.

Rule 11 was intended to “require litigants to ‘stop-and-think’ before initially making legal or factual contentions.” (Advisory Com. Notes, 1993 amend. to Fed. Rules Civ. Proc., rule 11, 28 U.S.C.) It “‘places an affirmative duty on the attorney or party to investigate the facts and the law prior to the subscription and submission of any pleading, motion or paper.’” (*Business Guides v. Chromatic Comm. Enterprises* (1991) 498 U.S. 533, 545 (*Business Guides*)). “The standard for determining whether to impose sanctions is one of objective reasonableness.” (*Neighborhood Research Inst. v. Campus Partners* (S.D.Ohio 2002) 212 F.R.D. 374, 378 (*Neighborhood*); accord, *Bockrath v. Aldrich*

⁴ All further references to rule 11 are to rule 11 of the Federal Rules of Civil Procedure. (28 U.S.C.).”

Chemical Co., Inc. (1999) 21 Cal.4th 71, 82.) The trial court must determine whether a reasonable and competent attorney would believe in the merit of an argument. (*Dodd Ins. Services v. Royal Ins. Co. of America* (10th Cir. 1991) 935 F.2d 1152, 1155.)

Defendants' motion for sanctions was based on plaintiff's filing of its second amended complaint. Defendants essentially asserted plaintiff violated section 128.7, subdivisions (b)(1), (b)(2), and (b)(3) by filing that pleading. They contended the ruling on the demurrer to the first amended complaint identified the shortcomings in the deceit cause of action and advised plaintiff what was needed to remedy the defects, but plaintiff ignored the ruling and failed to remedy the identified defects in its second amended complaint. Additionally, defendants contended the newly added cause of action for unfair business practices was based on a wholly inapplicable legal theory, and both causes of action lacked evidentiary support. The court granted the motion pursuant to section 128.7, subdivision (b)(3), finding that the allegations and other factual contentions did not have evidentiary support and were not likely to do so, even after further investigation and discovery.

A. Deceit cause of action

The first cause of action of the second amended complaint alleged deceit. Deceit is defined by statute as follows: "One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers." (Civ. Code, § 1709.) Deceit may take any of four forms:

"1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

"2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

"3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

“4. A promise, made without any intention of performing it.” (Civ. Code, § 1710.)

The elements of deceit are: “(1) misrepresentation of a material fact (consisting of false representation, concealment or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to deceive and induce reliance; (4) justifiable reliance on the misrepresentation; and (5) resulting damage.” (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 481.) Where fraud by concealment is alleged, the reliance required is that “the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact.” (*Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 97.)

As in motion proceedings generally, the burden of proof in the trial court on a motion for sanctions is on the moving party. (Evid. Code, § 500.) In their motion for sanctions, defendants asserted plaintiff’s second amended complaint failed to correct the defect identified by the court in its ruling on the demurrer to the first amended complaint. Defendants argued the second amended complaint contained frivolous and meritless claims, failed to state a cause of action, and could not have been filed for any other conceivable reason than to harass and annoy defendants. Defendants also asserted the second amended complaint lacked evidentiary support, because plaintiff relied on vague claims supported by conflicting and uncertain factual allegations, and “[t]he sheer volume of factual allegations and exhibits reveal that the pleadings lack clarity, merit, and evidentiary support.”

Defendants submitted the declaration of their attorney, Michael Mason, in support of the motion. That declaration asserted the second amended complaint “was totally and completely without merit and was filed for the sole purpose of harassing and annoying Defendant.” It stated: “In addition, Plaintiff’s counsel failed to amend the complaint in accord with the Court’s order of May 14, 2008, sustaining the demurrer. [¶] ... Plaintiff

added a new cause of action, for Unfair Business Practice, which on its face is completely inapplicable.”

At the time plaintiff filed its original complaint, it also filed several declarations and a number of exhibits. Additional declarations and exhibits were filed with the first and second amended complaints. Defendants did not identify any allegation in the second amended complaint that was not supported by evidence. They did not discuss the evidentiary matter in the documents plaintiff filed along with its complaints, or show that the evidence was deficient as a basis for the allegations of the second amended complaint. They did not explain how “[t]he sheer volume of ... exhibits” filed with the complaints could “reveal that the pleadings lack ... evidentiary support.”

Although defendants argued that the second amended complaint lacked evidentiary support, that argument, like the arguments that the pleading was frivolous and filed for the purpose of harassing defendants, was based on plaintiff’s failure to make the allegation suggested by the trial court in its ruling on the demurrer to the first amended complaint—that enough members of the congregation who voted in January 2008 would have voted against demolition if they had known the true facts that were concealed or misrepresented by defendants that the majority would have voted against demolition. Plaintiff’s claim, however, was broader than a claim that the outcome of the January 2008 vote was adversely influenced by defendants’ alleged deceit.

Plaintiff’s theory of liability was that defendants engaged in a course of deceitful conduct over a period of years that led the congregation down the path to demolition of the sanctuary building. They alleged that, when defendants took a vote of the congregation in 2004, defendants assured those voting that if they voted in favor of “constructing a new sanctuary on either side of Canal Street,” they would not be voting for demolition of the existing building. Subsequently, defendants characterized the vote as a vote to construct a new sanctuary “to replace the current one.” One of the members of plaintiff, Samuel Randolph, stated in his amended declaration, which was filed with

the first amended complaint, that, at the November 21, 2004, meeting, he voted in favor of the proposal to build a new sanctuary because he was assured that this was not a vote for demolition of the existing sanctuary.

Plaintiff alleged defendants misrepresented to or concealed from the congregation the actual costs of rehabilitating the existing building or constructing a new building and other relevant facts relating to the need for a new building, and concealed that they had not explored alternatives to the new construction they proposed. It alleged defendants contracted with architects, who began conducting preliminary field work on the church property, while still representing to the congregation that no final vote on demolition had been taken. Plaintiff alleged that one representative of the church stated, even before the January 2008 vote, that it was too late to consider alternatives. It alleged those who opposed demolition were derided, intimidated, and criticized. Thus, plaintiff essentially alleged defendants moved forward with plans for construction of a new sanctuary that required demolition of the existing sanctuary, while suppressing opposing views, denying any final decision on demolition had been made, and delaying the congregational vote on that decision until it was too late to consider alternatives.

The second amended complaint did not specifically allege that a majority of those voting in January 2008 would have voted against demolition in the absence of defendants' wrongful conduct. Instead, it alleged that its members conducted an informal survey of congregation members in November 2006, in which they promised the participants their responses would be kept confidential and which one may infer was free of pressure or intimidation by defendants. In that survey, 187 congregation members (more than a majority of those voting in January 2008) favored preservation of the sanctuary. From this and from the evidence that at least one member was persuaded to vote in 2004 for construction of a new sanctuary, a vote which allegedly was later treated as a vote for demolition of the existing sanctuary, it may be inferred that defendants' misrepresentations, concealments, and efforts to suppress opposition to their plans to

demolish the existing sanctuary and build a new one influenced the various votes of the congregation, culminating in the vote for demolition taken in January 2008.

Defendants did not demonstrate that any of these factual allegations were not supported by evidence. They did not show that the survey allegedly conducted by plaintiff's members was not in fact conducted, or that its results were not as alleged in the second amended complaint. They did not demonstrate that no members of the congregation relied on defendants' misrepresentations or concealment when they voted at various congregational meetings to proceed with plans for construction of a new sanctuary or with plans for the demolition of the existing sanctuary.

At the hearing of defendants' motion, the court stated:

"The Court does find that the Second Amended Complaint was brought without any sufficient evidentiary support and the Court bases that ruling on reviewing the ... Second Amended Complaint.

"And also the Court has reviewed the notice of depositions which was to view the survey which creates an inference to obtain information regarding the survey, which creates an inference that their complaint lacked evidentiary basis or reasonable evidentiary basis."

The court's written order stated sanctions were "justified in that on two separate occasions Plaintiffs have been afforded the opportunity and have failed to provide allegations or factual contentions based upon evidentiary support nor are they likely, after a reasonable opportunity for further investigation or discovery to do so."

In imposing sanctions, the court must describe the conduct determined to constitute a violation of section 128.7 and explain the basis for the sanction imposed. (§ 128.7, subd. (e).) The purpose of this explanation is to give the sanctioned party sufficient notice of the grounds for imposition of sanctions to allow him or her to argue against these grounds on appeal and to allow for meaningful appellate review. (*Olson Partnership v. Gaylord Plating Lab, Inc.* (1990) 226 Cal.App.3d 235, 240-241.) At the hearing the court made a broad statement that the second amended complaint was without

evidentiary support, but it did not identify any allegations of that pleading that lacked evidentiary support. To the extent the court drew an inference from plaintiff's dismissal of its action that its November 2006 survey would not support the allegations of the second amended complaint, that inference was unjustified. Plaintiff's counsel explained the action was dismissed in order to protect the identities of the survey respondents, to whom plaintiff's members had promised confidentiality. If the court were to infer from plaintiff's dismissal that the survey did not support the allegations of the second amended complaint, it would essentially shift to plaintiff the burden of proving the existence of evidentiary support (by disclosing information about the survey, including the identities of the participants); the burden of proving a lack of evidentiary support was on defendants as the moving parties. (Evid. Code, § 500.)

In its written order, the court, like defendants, seemed to focus on the absence of an allegation, supported by evidence, that a majority of those voting in January 2008 would have voted against demolition in the absence of defendants' deceit. Plaintiff, however, did not make such an allegation, and had no obligation at the pleading stage of the proceedings to submit to the court its evidence in support of that allegation, or any of the allegations actually contained in its second amended complaint. Defendants, in their motion for sanctions, made no showing that there was no evidentiary basis either for the factual allegations plaintiff actually made or for an allegation that the majority would not have voted for demolition in January 2008 in the absence of defendants' deceit. Consequently, we conclude defendants' showing was insufficient to justify imposition of sanctions against plaintiff's counsel, and the sanctions order was an abuse of discretion.

B. Unfair business practices cause of action

The second cause of action for unfair business practices alleged that the acts set out in the first cause of action constituted unfair business practices under the unfair competition law (Bus. & Prof. Code, § 17200, et seq.). Unfair competition includes "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or

misleading advertising.” (Bus. & Prof. Code, § 17200.) Defendants argued that the unfair competition law did not apply to the activities of a church. The court’s order did not separately address the second cause of action. Its ruling that plaintiff had been “afforded the opportunity and ha[d] failed to provide allegations or factual contentions based upon evidentiary support” was not limited to the first cause of action.

Because the second cause of action was based on the same factual allegations as the first, and the court found that those factual allegations had no evidentiary support, our discussion of the ruling on the first cause of action applies equally to the second cause of action. The sanctions order was an abuse of discretion.

II. Sustaining of Demurrer to Breach of Trust Cause of Action

In its opening brief, plaintiff includes an argument that the order sustaining the demurrer to the breach of trust cause of action without leave to amend “should be reversed because the pleadings could have been amended to state the requisite standing.” Plaintiff, however, did not appeal from the order sustaining the demurrer to the breach of trust cause of action or from any subsequent dismissal of that cause of action.

The notice of appeal specifically states that plaintiff and its attorney, Mackie, “appeal ... from the Order Granting Motion Imposing Monetary Sanction entered ... on August 28, 2008.” Notices of appeal must be liberally construed. (Cal. Rules of Court, rule 8.100(a)(2).) “[N]otices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.” (*In re Joshua S.* (2007) 41 Cal.4th 261, 272.) “This doctrine applies primarily ... where the notice of appeal has misdescribed the judgment or order sought to be appealed from.” (*Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661 (*Russell*).) “The rule favoring appealability in cases of ambiguity cannot apply where there is a clear intention to appeal from only part of the judgment or one of two separate appealable judgments or orders.” (*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 625 (*Unilogic*).) Where a notice of

appeal explicitly describes a particular order or judgment, it would be beyond liberal construction to view the notice as referring to an entirely different order. (*Russell, supra*, at p. 661.)

In *Unilogic*, the defendant appealed from “the Judgment on the Eleventh Cause of Action of the Cross-complaint entered on September 10, 1990, and from the Judgment on the Tenth Cause of Action of the Cross-complaint entered on October 9, 1990.” (*Unilogic, supra*, 10 Cal.App.4th at p. 623.) The court observed the notice of appeal was “not in the least ambiguous” and concluded it was without jurisdiction to review the judgment on the pleadings entered on the *eighth* cause of action of the cross-complaint on October 9, 1990. In *Morton v. Wagner* (2007) 156 Cal.App.4th 963, the defendant appealed from “the decision and order ... denying reconsideration’ and the ‘decision granting issuance of a pre-filing order.’” (*Id.* at p. 967.) The court concluded the notice of appeal could not be liberally construed to include an appeal from the judgment granting the plaintiff’s petition for an injunction. “[I]t is the notice of appeal which defines the scope of the appeal by identifying the particular judgment or order being appealed,” and to construe the notice of appeal to include an appeal from the judgment would be prejudicial to the plaintiff. (*Ibid.*)

The notice of appeal is unambiguous. Plaintiff appealed only from the August 28, 2008, order imposing sanctions. Even applying the rule of liberal construction, we cannot construe the notice of appeal to include the May 27, 2008, order sustaining the demurrer to the breach of trust cause of action. That order is beyond the scope of this appeal.

Additionally, a voluntary dismissal “terminates the action for all time and affords the appellate court no jurisdiction to review rulings on demurrers or motions made prior to the dismissal.” (*Yancey v. Fink* (1991) 226 Cal.App.3d 1334, 1343.) Since plaintiff voluntarily dismissed its entire action, a prior ruling on defendants’ demurrer is not appealable.

DISPOSITION

The order imposing sanctions is reversed. Plaintiff is awarded its costs on appeal.

HILL, J.

WE CONCUR:

GOMES, Acting P.J.

DAWSON, J.